

BAY STATE HYDROPOWER ASSOCIATION

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Department of Energy Resources
100 Cambridge Street
Boston, MA 02114

**RE: Request for Comments on the Renewable Portfolio Standard Class I under
MGL Chapter 25A, Section 11F**

Dear Sir/Madam:

The Bay State Hydropower Association ("BSHA") thanks the Department of Energy Resources (the "Department") for the opportunity to submit comments on the Renewable Portfolio Standard ("RPS") of the Green Communities Act (the "Act"). As you are aware, the BSHA comprises over 90% of the owners of hydro facilities in Massachusetts with over 90% of the capacity of hydropower in the Commonwealth.

Members of the Bay State Hydropower Association provide renewable and non-CO emissions energy to the citizens of the Commonwealth of Massachusetts. The Association's members will be an integral part of achieving Commonwealth's goal of attaining 15% of energy supply from renewable resources by 2020. Members of the BSHA provide green investments and jobs in Massachusetts.

The operation of the RPS is very important to the members because it will provide for maintenance of existing facilities of a certain size and the development of more power either from new facilities or improvements to existing facilities.

Following are the Association's comments on Class I from the Department's inquiry and comment notices.

Class I Comments

Implementation Responsibility and Timing:

Qualifying hydro resources must be afforded the means to be certified to begin producing Class I RECs as of January 1, 2009. As a result, it is vital for the Department to: a) issue its

regulations in a timely manner, and b) establish that any qualifying resource which submits a complete application within 90 days of the issuance of final regulations will be deemed certified to begin producing RECs as of January 1, 2009. The Legislature envisioned a vibrant RPS system operational on January 1, 2009 that includes hydro assets. The necessity of the January 1, 2009 start date cannot be overstated. If the rules promulgated by DOER do not ensure that hydro RECs will be available on January 1, 2009, then suppliers and hydro facilities will be at a disadvantage and the goal of this legislation will be frustrated.

Alternative Compliance Payment

The Alternative Compliance Payment should remain as it is today. The present level encourages renewable generation without being prohibitive for ratepayers. The Alternative Compliance Payment should remain equal for all Class I resources.

Criteria

New Hydropower Facilities

The Act contemplates RECs supporting the development of new hydro resources. The development of a new facility where hydro has not previously existed is qualifying on its face. However the Department should consider additional conditions in which Class I RECs should be available (e.g. a return from abandonment, substantial reconstruction or repowering, etc.).

Appropriate Environmental Standards

Regarding environmental standards for Class I qualifying hydro resources, the language of the Act reads “such new facility or increased capacity or efficiency at each such existing facility must meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities.”

For FERC regulated hydro facilities, the system of state and federal environmental oversight and jurisdiction, required by the Act, already exists. After 1986, all FERC regulated hydro facilities, licensed or exempted have been required to participate in a highly prescribed process of consultation with all relevant environmental agencies of federal and state government. Similarly, after 1986, to be allowed by the FERC, any capacity addition proposed at a FERC regulated hydro facility, must be subjected to the same rigorous regulatory, environmental review process.

Therefore, the BSHA proposes that the regulations governing qualification of new and incremental hydro capacity be written to include in RPS Class I all energy resulting from new hydroelectric facilities regulated by FERC, or incremental energy from increased capacity or efficiency improvements at existing hydroelectric facilities regulated by FERC under licenses,

amendments, or exemptions issued after 1986, so long as the relevant state or federal agencies of jurisdiction have issued a Section 401 Water Quality Certification or have waived the need for water quality certification for such facility. To be included in RPS Class I, facilities regulated by FERC under licenses or exemptions issued during or before 1986 and facilities not regulated by FERC must meet substantially similar standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as certified by the relevant state, provincial and federal agencies of oversight and jurisdiction.

The great majority of hydroelectric generators applying for certification as RPS Class I resources will be covered by FERC licenses, exemptions, or license amendments issued after 1986. By creating a distinction between: a) applicant hydro generators whose relevant FERC documentation (i.e. licenses, exemptions, or license amendments) was issued after 1986; and b) the very small number of applicant hydro generators who are either not FERC regulated, or whose relevant FERC documentation was issued during or before 1986, the Department will eliminate a large amount of costly, time consuming, redundant, bureaucratic effort, and accelerate the certification of many megawatts of eligible capacity.

Determination of Eligible Incremental Energy

Since the advent of energy tax credits and renewable portfolio standards, a great deal of time has been spent on the design of systems for quantifying and verifying the amount of energy generated by efficiency improvements and additions to installed capacity at existing hydroelectric facilities. The BSHA believes two particular methodologies have been developed which are superior. The Association urges the Department to adopt both of these standards, to be applied in the alternative, at the discretion of the applicant.

The first of these is the FERC's "Renewable Energy Production Tax Credit: Instructions for Requesting Certification of Incremental Hydropower Production Pursuant to the Energy Policy Act of 2005" (<http://www.ferc.gov/industries/hydropower/gen-info/comp-admin/credit-cert.pdf>).

Because one size does not always fit all, BSHA recommends that the Department grant applicants the option to pursue a "Water-to-Watts" method. Many applicants will have access to verifiable hourly hydrologic gage information, describing the quantity of river flow available to their facilities on an instantaneous basis. Almost all applicants have verifiable records indicating the rate of energy production at their facilities on an instantaneous basis. By correlating historic hydrologic and energy production records, applicants may develop a historic energy production rates for their facilities. These historic rates can easily be compared to the new energy production rates at their improved facilities, and an incremental energy production calculation can be made.

On-Site Generation

The Department in its rules should use the RPS criteria for hydropower facilities as suggested for non-on-site Class I qualified renewable power for the on-site renewable power production that is required as part of the Act. This satisfies the environmental standards required under the Act and provides the mechanism for determining production.

Thank you again for the opportunity to provide these comments. If you have any questions, please contact me or our counsel, James Smith, Esq. or Nancy Farias, Esq., at 617-523-0600.

Respectfully submitted,
/s/

Thomas Tarpey
President